

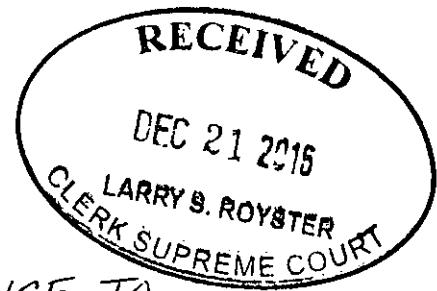
STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Supreme Court No. 154779
C.O.A No. 325730
L.C. No. 14-008324

CARL RENE BRUNER II,
Defendant-Appellant.



DEFENDANT-APPELLANT'S RESPONSE TO
PLAINTIFF-APPELLEE'S ANSWER OPPOSING
DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

The Defendant-Appellant ask this Court to GRANT Defendant-Appellant's application for leave to appeal. In support Appellant states the following:

(1.) Defendant-Appellant's application for leave shows the decision of the Michigan Court of Appeals affirming the admission of codefendant Lawson's alleged hearsay confession which implicated Defendant-Appellant was contrary to and was an unreasonable application of clearly established federal law concerning a criminal defendant's Sixth Amendment right to confront the witness against him.

(2.) Defendant-Appellant believes the Court should still find that the admission of nontestimonial statements by a codefendant violates Federal Rule of Evidence 403 because the probative value is substantially outweighed by the danger of unfair prejudice.

(3.) Defendant-Appellant suffered actual prejudice, the codefendant's alleged hearsay confession admission had a devastating practical effect on Defendant-Appellant's Defense. This devastating effect was not cured by redaction of Defendant-Appellant's name with the word blank. Redaction does not prevent juries from misusing alleged confessions by one defendant as evidence against the other defendant. Bruton created a bedrock principle that offers some protection against being convicted on the basis of jury misuse of a codefendant's confession. A nontestifying codefendant's redacted confession falls within the class of statements protected by the rule of *Bruton v. United States*, 391 US 123, 20 L Ed 2d 476, 88 S Ct 1620 -- forbidding, as a violation of a defendant's rights under the confrontation clause of the Sixth Amendment to the United States Constitution, the use of such a confession at a joint criminal trial, where (1) the nontestifying codefendant's redacted confession is admitted as evidence, (2) the nontestifying codefendant's name is removed, (3) the confession refers directly to the existence of the nontestifying codefendant, and (4) the nontestifying codefendant's name has been replaced with an obvious blank space, a word such as "deleted", a symbol, or other similarly obvious indications of alteration.

(4.) The People's brief on Appeal to the Court of Appeals argues that the statement is not testimonial so it is outside the scope of Bruton. Even if nontestimonial hearsay is beyond the scope of the Bruton doctrine after Crawford, the Court can still find reversible error under Rule 14 or Rule 403 based upon the same considerations whether the co-defendant's extrajudicial statement so 'powerfully' incriminated the defendant.

Appellant as it created a 'substantial risk' that a reasonable jury would be unable to follow the court's limiting instruction and would consider that statement in the defendant-appellant's guilt.

(5.) While the law may have changed regarding whether the Defendant-Appellant has a Sixth Amendment right to Confrontation in non-testimonial setting after Crawford, what has not changed is the relationship between cross-examination and reliability of testimony. Because the Defendant-Appellant's codefendant invoked his Fifth Amendment right to refuse to testify in the joint trial, Defendant-Appellant could not confront codefendant, and therefore could not show the jury all of the reasons that the purported confession was unreliable. It is impossible to assess the reliability of Westley Webb's testimony without first acknowledging Mr. Webb for what he was -- an incentivized informant. Courts have consistently noted the problems associated with relying on incentivized testimony and it should come as no surprise then that testimony from incentivized witnesses has been found to be the leading cause of wrongful convictions in capital cases. The Due Process Clause of the United States Constitution bars the admission of fundamentally unreliable evidence in criminal proceedings. For at least the last Forty years, whether under the rubric of the Confrontation Clause or the Due Process Clause, this Court has consistently emphasized the importance of ensuring the reliability of hearsay evidence. The Defendant-Appellant was never afforded the opportunity to challenge the evidence underlying the state's case, (the alleged confession),

with "the traditional reliability - testing tools available to a criminal defendant," which include the right to compulsory process and to confront and cross-examine witnesses.

(6.) The State argues that since the alleged hearsay statement was made to a friend it is admissible. The rationale behind an assumption that accomplice confessions to family and friends are admissible ignores the incentive family members or friends may have in characterizing their loved ones statements. This rationale, also, ignores the incentive that an accomplice may have in minimizing or aggrandizing his involvement in nefarious activity when confessing to a loved one or friend. Often there are incentives to misrepresent the truth in conversation with family and friends that are as powerful as the incentives to misrepresent the truth in conversation with the authorities.

(7.) In sum, Defendant-Appellant's application raises clearly established federal law worthy of this Court's review, and it should be GRANTED.

RELIEF

WHEREFORE, the Defendant-Appellant CARL RENE BRUNER, request that this Honorable Court GRANT the Application for Leave to Appeal.

Respectfully Submitted
Carl Rene Bruner II

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Dated: December 20, 2016